

23/17/16

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

STB Docket No. AB-1071

**STEWARTSTOWN RAILROAD COMPANY
– ADVERSE ABANDONMENT –
IN YORK COUNTY, PA**

**JOINT REPLY IN OPPOSITION TO JAMES RIFFIN'S
FILINGS OF JANUARY 18, 2012**

**Alex E. Snyder
BARLEY SNYDER
100 East Market Street
York, PA 17401
Tel.: (717) 852-4975
asnyder@barley.com**

**Attorney for Stewartstown Railroad
Company**

**Keith G. O'Brien
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7852, (202) 663-7824
kobrien@bakerandmiller.com
rwimbish@bakerandmiller.com**

**Attorneys for the Estate of
George M. Hart**

January 20, 2012

**BEFORE THE
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INTRODUCTION AND BACKGROUND

The Estate of George M. Hart (the "Estate") and the Stewartstown Railroad Company ("SRC") hereby reply jointly and in opposition to James Riffin's so-called "notice of intent to file an offer of financial assistance," and his related filings in this proceeding. For the reasons set forth below, Mr. Riffin's January 18 filings – all three of them – should be rejected and/or denied promptly.

As background, on July 7, 2011, the Estate of George M. Hart (the "Estate") filed an application ("Application") pursuant to 49 U.S.C § 10903 and 49 C.F.R. Part 1152, Subpart C, to authorize the abandonment of the entire line of the Stewartstown Railroad Company ("SRC") located in York County, PA. As is reflected in the Federal Register notice published in connection with this proceeding on July 27, 2011, the Board would not entertain OFAs for the purpose of subsidizing continued service on the subject rail line, but it would permit the filing of

OFA to purchase the subject rail line for purposes of continued rail service.¹ On January 18, 2012 – more than six months after the Estate filed its Application – Mr. James Riffin submitted in this proceeding three interrelated filings as follows:

- a notice of intent to participate as a party of record (the “Participation Notice”);
- a notice of intent to file an offer of financial assistance (the “OFA Notice”); and
- a motion for a protective order.

ARGUMENT

Aside from the fact that there is no provision in the Board’s regulations for the filing of a notice of intent to file an offer of financial assistance (“OFA”) in abandonment proceedings filed under the formal application procedures,² Mr. Riffin’s effort to insert himself into this abandonment proceeding by way of the OFA process is unavailing, because Mr. Riffin’s OFA Notice, and any subsequent OFA that he may have desired to file, are barred by the time limits set forth in the OFA statute (49 U.S.C. § 10904) and by the Board’s corresponding regulations at 49 C.F.R. § 1152.27. Accordingly, Mr. Riffin’s OFA Notice must be rejected as untimely, his

¹ In requesting exemptions from certain of the statutory requirements for formal abandonment applications and in seeking exemptions from related regulatory provisions, the Estate explained that it would be willing under certain circumstances to allow for OFAs to purchase the subject rail line, but it objected to the use of the OFA process for subsidy purposes. The Board granted both of the Estate’s requests, such that OFAs to purchase the line could have been entertained here, but not OFAs to subsidize continued service. (See Board Decision served in this proceeding on March 10, 2011.) The Estate neither asked for, nor was it granted, an exemption from the OFA filing deadline provision at 49 U.S.C. § 10904(c).

² There is no provision for the submission of a “notice of intent” to file an OFA in an abandonment by formal application proceeding such as this one. The Board has provided for the filing of such a notice of intent under the expedited abandonment notice of exemption process only (see 49 U.S.C. § 1152.27(c)(2)(i)), but the regulation in that case also states that such a formal notice of intent to file an OFA must be filed no later than 10 days after notice of the abandonment is given in the Federal Register. Accordingly, not only would a prospective OFA filing be untimely, but Mr. Riffin’s attempt at a “notice of intent” – assuming such a thing were permissible in this case at all – is procedurally defective as well.

Participation Notice also should be rejected, and his motion for a protective order should be denied as moot.

Concerning the permitted timing of an OFA, 49 U.S.C. § 10904 could not be clearer. The pertinent section of the statute states quite plainly that, “Within 4 months after an [abandonment or discontinuance of service] application has been filed under [49 U.S.C. § 10903], any person may offer to . . . purchase the railroad line that is the subject of such application.”³ The corresponding Board regulations elaborate upon this timing requirement, stating that, in an abandonment proceeding brought under the formal application procedures, “[o]ffers of financial assistance will be due 120 days after the application is filed or 10 days after a decision granting the application is served, whichever occurs sooner” (emphasis added).⁴

Mr. Riffin has emerged on the scene here some six months after the Estate filed its Application, more than 60 days after the Board’s statutorily-mandated 120-day OFA filing deadline passed. Mr. Riffin offers no excuse for his late appearance, and he supplies no justification whatsoever for why the Board nevertheless should accept his untimely request to participate in this abandonment proceeding. Mr. Riffin had notice of the proposed abandonment as of the date of the July 27th Federal Register publication, as had any other interested person, and yet he did nothing between that date and November 5, 2011 (the 120th day following the filing of the Estate’s Application) to prepare and file an OFA.⁵ In short, Mr. Riffin is time-barred from making any attempt at an OFA in this proceeding, and the Board’s regulations

³ 49 U.S.C. § 10904(c).

⁴ 49 C.F.R. § 1152.27(b)(1).

⁵ To be very clear on this point, section 10904(c) and the Board’s regulations pertaining to OFA deadlines require an offeror to file an OFA – and not a notice of intent to file an OFA – on or before the 120th day after the filing of a formal abandonment application.

establish that the appropriate course is for the Board to reject and/or deny all of the Mr. Riffin's January 18 filings.⁶

CONCLUSION

The OFA statute and the Board's regulations stemming from that statute make it abundantly clear that Mr. Riffin has no place in this proceeding. Mr. Riffin's OFA Notice is inappropriate for a formal abandonment application proceeding such as this one, and any prospective OFA Mr. Riffin may have planned to file to acquire some or all of the subject SRC rail line was due well over two months ago. As such, Mr. Riffin's unexplained and unexcused late intrusion into this proceeding is highly inappropriate and unjustified, and it is for this reason that the Estate and SRC have agreed jointly to respond to Mr. Riffin's January 18 filings.

Aside from the fact that Mr. Riffin's filings suffer from obvious procedural defects and must therefore be rejected or denied,⁷ the Estate and SRC, in their respective opinions, can conceive of few (if any) who would be more ill-suited to undertake an OFA for the purposes of the legitimate preservation of rail service anywhere. The Board has questioned Mr. Riffin's bona fides to undertake an OFA in an unrelated abandonment proceeding in light of his voluntary personal bankruptcy.⁸ The Estate and SRC have reason to believe that Mr. Riffin's bankruptcy

⁶ As 49 C.F.R. § 1152.25(d)(5) states, "the Board will reject any pleading [required or permitted to be filed under 49 C.F.R. Part 1152] filed after its due date unless good cause is shown why the pleading is filed late."

⁷ Although Mr. Riffin's various filings suffer from far more egregious defects, the Estate and SRC note that the certificates of service attached to his three January 18 filings certify that Mr. Riffin has served only counsel for the Estate and SRC. He did not certify service on the numerous other parties to this proceeding. Accordingly, it appears that Mr. Riffin failed to comply with the service requirements of 49 C.F.R. § 1152.27(c)(1)(i).

⁸ See Consolidated Rail Corporation – Abandonment Exemption – In Hudson County, NJ, STB Docket No. AB 167 (Sub-No. 1190X) slip op. at (STB served May 17, 2010) ("Riffin could not be considered a financially responsible party [to bring an OFA], as he recently filed for bankruptcy protection. Voluntary Petition, In re Riffin, No. 10-11248 (Bankr. D. Md. Jan. 20, 2010)").

before the Maryland state court has not yet been concluded, and they have been advised that it is very likely that Mr. Riffin will emerge from bankruptcy with insufficient assets to purchase a rail line unless he has failed fully to disclose his assets to the court.

Again, Mr. Riffin has no business being here, and he certainly has no right to intervene. His intended OFA to acquire some or all of SRC's rail lines is far too late to be allowed (and, in fact, under the Board's rules it must be rejected as untimely), he would not, in any event, prove to be a financially responsible party under the applicable OFA standards, and for all of these reasons, Mr. Riffin's various STB filings of January 18, 2012 must be rejected or denied as appropriate.

Respectfully submitted,



Keith G. O'Brien
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7852 and (202) 663-7824
kobrien@bakerandmiller.com
rwimbish@bakerandmiller.com

Alex E. Snyder
BARLEY SNYDER
100 East Market Street
York, PA 17401
Tel.: (717) 852-4975
asnyder@barley.com

Attorney for Stewartstown Railroad
Company

Attorneys for the Estate of George M. Hart

Dated: January 20, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing Joint Reply in Opposition to James Riffin's Filings of January 18 to be served upon all parties of record by first class mail (postage prepaid) or by more expeditious means of delivery.


Robert A. Wimbish

Dated: January 20, 2012